April 2, 2002

Before the Federal Communications Commission
Washington, D.C.

In the Matter of:	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6

COMMENTS SUBMITTED BY THE
OFFICE OF THE MICHIGAN INFORMATION NETWORK
IN RESPONSE TO THE
NOTICE OF PROPOSED RULEMAKING AND ORDER
RELEASED JANUARY 25, 2002

Mr. Jacque Passino
Director
Department of Information Technology
State of Michigan
105 W. Allegan
P.O. Box 30743
Lansing, MI 48909
(517) 373-1006

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I. INTRODUCTION

The Michigan Information Network (MIN) is part of the State of Michigan's Department of Information Technology and provides ongoing support for Michigan schools and libraries to navigate the complex E-rate application process. This support includes outreach in the form of training sessions, presentations, conference calls, individual phone calls, written correspondence, and e-mail messages on how to fill out the myriad of Federal Communications Commission (FCC) forms, comply with the Children's Internet Protection Act (CIPA) requirements, understand product and service provider eligibility requirements, and file an appeal when an application is rejected or discount funding is denied for what appear to be unjust reasons. MIN also coordinates with the Michigan Department of Education and the Library of Michigan to assist school districts and libraries develop technology plans as well as review and approve technology plans at the state level. MIN provides a point-of-contact for the Schools and Libraries Division (SLD) of the Universal Services Administrative Company (USAC), also referred to as the "Administrator", to exchange crucial program information and resolve applicant issues.

MIN recognizes the efforts that the SLD and FCC have engaged in over the past several months to ease the burden placed upon applicants by the application process. Examples include extending the deadline for receiving appeals from 30 days to 60 days and accepting the postmark date as the deadline for submitting application forms. MIN also recognizes the need to fine-tune the program to improve operation, ensure equitable distribution of program funds, and prevent fraud, waste, and abuse. We appreciate the opportunity to comment on these important issues.

MIN supports the following principles relevant to the Telecommunications Act of 1996:

A. The program should be competitively neutral (i.e., technology, vendor, and procurement neutral).
B. Educational and public research interests should guide decisions about eligible or ineligible services.
C. Decisions about eligible services should be governed by the cost-effectiveness of the service, not whether services are leased, purchased, or a lease/purchase option.
D. Where there is conflict between these principles, the outcome should be in the best interests of the applicant.

MIN believes these principles should be guiding factors in any decisions related to program improvement.

II. SUMMARY

Over the last four years, the E-rate program has made it possible for many schools and libraries to dramatically improve their telecommunications capabilities and provide access to the Internet for their respective constituents. The need and desire to continue improvement and expansion of technology is strong, as evidenced by the fact that demand for E-rate discounts has exceeded the annual funding cap of $2.5 Billion by more than double for the last two program years (Years 4 and 5). This demand, coupled with rules and policies established by the Administrator, has resulted in a situation whereby only applicants at the higher discount levels (87 percent and above) receive funding for internal connections (Priority 2). Concern as to whether sufficient funding will be available to cover Priority 1 requests at all discount levels has also arisen.

The MIN respectfully submits its comments to the NPRM in an effort to address these as well as other concerns with regards to the E-rate program. Following are some of the key recommendations provided to improve operation, ensure equitable distribution of program funds, and prevent fraud, waste, and abuse.

Make the application process easier.

Multiple forms, numerous deadlines, confusing and misleading instructions, complex discount calculations, etc. can make applying for the E-rate program worse than filing one's taxes. Add to that the requirement to enter a formal appeal process to correct simple and understandable mistakes, and one can see why this program generates a very high level of frustration for participants.

To help eliminate some of this frustration, we recommend the following:

- Revise the process for determining eligible vs. non-eligible services by committing to user-focused review and pre-approval of new services in order to keep the list of eligible services easier to understand and aligned with advances in technology.
- Do not require ADA compliance certification in applying for E-rate discounts.
- Allow consortia to set their own rules regarding consortia membership, even if such membership includes public or private sector entities.
- Establish an "E-Z Form 470" for those applicants where the service and service provider remain the same from one program year to the next, or where there is no competition in the area.
- Provide a searchable web directory of applicants and service providers and corresponding applications, funding commitments, denials, reversals, appeals, appeal decisions, etc. At a minimum, such a web directory should be made available to state E-rate coordinators.
- Improve the online application process to accommodate pre-populated forms, timely PIN assignments, electronic filing of all attachments, the ability to check the status of completed and partially-completed (i.e., not yet submitted) applications, and online filing of all SLD forms (including appeals).

- Implement an "Evergreen Form 471" for those cases where the only change is in program year, requested funding amount, or participating entities (consortia members) from one program year to the next.
- Streamline the application process for basic telecommunications by implementing a program similar to USAC's High Cost program for schools and libraries.

Allow applicants the flexibility to choose their preferred payment option.

Providing direct discounts on bills is not always possible, e.g., in the case where charges for both eligible and ineligible services appear on the same phone bill or statement. The Billed Entity Applicant Reimbursement (BEAR) form provides a means around this. However, it should be entirely at the applicant's discretion as to whether a BEAR form or direct discount on bills is used. Additionally, when a BEAR form is requested by the applicant, the Administrator should send payment directly to the applicant, and not to the vendor. This will serve to significantly reduce the potential for fraud, waste and abuse in the program brought about when vendors go bankrupt or do not deliver reimbursements to the applicant after receiving a check from the Administrator.

Limit internal connections funding requests to two consecutive years and transferability of equipment to three years.

By limiting internal connections funding requests to two consecutive years, those applicants that are in the lower discount brackets may finally get a chance to at least be considered for internal connections funding. Currently, only those in the 87 percent discount bracket or higher ever see internal connections funding. Limiting the transfer of equipment to three years is expected to eliminate the practice whereby 90 percent applicants may be ordering the same equipment every year and passing it down to entities within their jurisdiction who are at a much lower discount percent.

Reduce the need for appeals and improve the appeals process.

The Administrator should streamline the application process (as recommended above) to reduce the need for appeals, which would, in turn, reduce the need for funds to fund appeals. Carryover funds from the previous year and Form 500 funds should be used to fund successful appeal decisions.

Applicants should be allowed 60 days for filing any appeals, and appeals should be considered as filed when post-marked. Also, the FCC should require all appeals to be acted upon within 60 days.

Do not require applicants or providers to pay for independent audits.

Independent audits requested by the SLD or FCC (including the Office of the Inspector General) should be paid for by the Administrator out of E-rate funds. In the event wrongdoing is discovered as a result of the audit, then the applicant or provider should

be required to repay any inappropriate discounts received, along with punitive monetary penalties, including the cost of the audit.

Willful or repeat violators should not be completely barred from the E-rate program – publicity about their wrongdoing may be more valuable and easier to implement than protracted attempts to bar their participation. Suspension from the program for a specified time period (e.g., the next program year) may be an acceptable solution.

How to prevent and what to do with unused funds.

The lengthy and complex application process can result in funds going unused. Our recommendations summarized above and detailed below in the Comments section of this document should help to minimize unused funds resulting from the application process. Realigning the funding cycle to more closely coincide with applicants' budgeting cycles is another means by which unused funds may be minimized. When unused funds are left remaining at the end of a funding year, such funds should first be applied to fund successful appeals, and then rolled over to fund the next year's funding requests. Another consideration for such unused funds is to cover program administration costs incurred by the states.

Other administrative or procedural rules changes to consider.

Currently, the discount calculation method required by libraries and consortia puts them at a disadvantage as it usually results in a lower discount rate. The Administrator should consider offering libraries and consortia alternative methods for calculating their discounts.

The urban/rural classifications used by the program penalizes some schools and libraries which are truly rural, but which are located in a county designated as urban by the SLD. The Administrator should review this classification method to see if a more equitable solution can be found.

Census data is being used as a determinant of need for the new ESEA "No Child Left Behind" legislation. We recommend that the Administrator look into this method as a possible remedy for the inequities that exist in the urban/rural classifications, and the discount calculation methods required by libraries and consortia.

As stated earlier, the Administrator should consider rolling over unused funds from one program year to the next. In so doing, funding commitments should be allowed to exceed the $2.25 Billion cap in those years where rollover funds are available from a previous funding year.

Provide financial compensation to states to cover their program administrative costs.

The Administrator should recognize the contribution of states in assisting with the administration of the E-rate program. The outreach efforts put forth by the states is the primary reason that the FCC is able to maintain very low administrative costs when

compared to other federal programs. The involvement of the state E-rate coordinators has reduced the administrative costs of the SLD by providing training and advice on applications, approving technology plans and other outreach efforts. Without this support, there would be many more rejected applications, rejected appeals, delayed proceedings, and other time-consuming problems for the SLD. Thus, we recommend that the Administrator subsidize the training and advisory role performed by the states through compensation for travel, seminar, and teleconference costs to enable the continuation of this critical support.

Further details to the above recommendations, as well as other points for the Administrator to consider, are presented in the Comments section immediately proceeding.

III. COMMENTS

A. Application Process

1. Issues related to the process for determining eligible services, and the eligibility for schools and libraries universal service support of such services as Wide Area Networks, wireless services, and voice mail

(a) Simplify the eligible service categories.

The current distinctions of what IS eligible, what IS NOT eligible, and what is CONDITIONALLY eligible are a constant source of confusion to applicants. The minute distinctions require excessive Program Integrity Audit (PIA) review of Forms 471, and increasingly, more detailed review of Billed Entity Applicant Requests (BEARs) and Service Provider Invoice Forms (SPIFs), which results in higher administrative costs to the program. These minute distinctions also, unfortunately, limit the ability of schools and libraries to select the best technology solutions for their specific technology infrastructure needs.

A specific example is leasing wireline equipment through an eligible telecommunications carrier vs. purchasing wireless components. The E-rate program allows discounts for the former but not the latter. Leased equipment is often a more expensive and sometimes less efficient option compared to wireless which may offer equal or better service at a lower cost. This practice creates wasted dollars simply because of an "eligible" vs. "ineligible" distinction on a list. This practice also gives a competitive advantage to telecommunications carriers, neutralizing the purpose of the competitive bid process emphasized in the program.

The SLD's current process for determining eligible services and publishing an eligible services list (ESL) creates additional disadvantages for applicants in that it does not appear to keep pace with the continuous telecommunications advances or the constantly changing technology needs of schools and libraries. Here again, applicants are denied the opportunity to take advantage of the most cost-effective technology solutions for their particular situation because the ESL has not "caught up" yet with new product and service offerings and changing technology needs.

To remedy this situation, the FCC should consider the following process changes with regards to the ESL:

1. Implement a process for the review and pre-approval of new services, thereby allowing applicants to apply for advanced telecommunications without being penalized by an ESL that is behind the most recent telecommunications product and service releases. This review and pre-approval process should be frequent and ongoing, resulting in routine updates to the ESL with new and innovative service delivery methods and products.
2. Commit to an ongoing, user-focused review process for items requested that currently are not classified as "eligible" on the ESL, with specific time commitments for responses. The "after-the-fact" appeal process currently in place is not an effective means for an applicant to resolve variations in interpretations of the list.
3. Make the criteria used for determining eligibility, along with a description of the process to be used for approval/pre-approval of products and services, available to the applicant and service provider communities in one unified list via the SLD web site.
4. Develop a process to reassess the criteria used for determining eligibility so that it remains in tune with technology advances (e.g., wireless and high-speed/broadband access), stays abreast of the changing technology needs of applicants, and adheres to the goals of the program.
5. Make the list of eligible products and services available to applicants and service providers (e.g., via the SLD web site). This would allow applicants and vendors to review, and challenge where appropriate, SLD eligibility decisions BEFORE funding is requested for such items on E-rate applications, thereby reducing the number of requests for funding of ineligible products or services.

Additionally, the following changes should be considered to bring the ESL more up-to-date with current technology:

1. Consider Wide Area Networks (WANs) and wireless solutions "eligible" as Priority 2 if purchased, and "eligible" as Priority 1 if leased from common carriers or non-common carriers. This will encourage applicants to apply for discounts for the most cost-effective solution to their needs, not just for those items they can get discounts on because of the current structure of the ESL.
2. Consider voice mail, E-911, wireless, and all telephone charges to all school and library locations and employees (including the bus garage and the cafeteria) "eligible." One exception is directory advertising charges which should remain ineligible. The Administrator should establish benchmarks for acceptable service levels for applicants of various sizes. PIA could then be directed to conduct special reviews of requests that exceed the benchmark. Applicants subject to review under this section should be evaluated on the basis of applicant verification of need through the applicant's

technology plan. Benchmarks should be related to the number of students served in the case of schools, and the number of employees in the case of libraries. This revision will significantly reduce the administrative costs and application evaluation time as reviewers would no longer be required to verify a majority of applicant telephone and cellular charges; rather, reviewers would only need to review applications requesting excessive amounts of money for telephone or cellular service.

3. Consider Internet2 (I2) fees "eligible."

2. <u>Permitting schools and libraries to receive discounts for Internet access that may in certain limited cases contain content, as long as it is the most cost-effective form of Internet access</u>

(a) We see no need for changes in this policy at this time.

3. <u>The 30 percent processing benchmark for reviewing funding requests that include both eligible and ineligible services</u>

(a) Leave the policy as is.

The 30 percent ineligibility policy provides a reasonable balance, thus, the policy should be continued until the underlying structure of the eligibility process is changed.

4. <u>Whether to require a certification by schools and libraries acknowledging their compliance with the requirements of the Americans With Disabilities Act (ADA) and related statutes</u>

(a) Do not implement this requirement.

ADA is the law, and, as public institutions, schools and libraries must comply with the Act regardless of whether or not they receive E-rate funding. There are no specific ADA certification requirements included in the Telecommunications Act of 1996 or the Children's Internet Protection Act of 2000. To create certification requirements unrelated to requirements of the legislation is inappropriate and unnecessary. Thus, specific compliance certification with respect to ADA should NOT be a requirement for obtaining E-rate funds.

5. Modifying the FCC's rule governing when members of a consortium may receive service from a tariffed service provider at below-tariff rates

(a) Allow consortia to set their own rules regarding consortia membership.

MIN believes that the FCC rule should encourage the aggregation of demand through consortia contracts. Consortia should be permitted to negotiate the best possible rates for products and services, lowering unit costs and minimizing overall costs to the program. Rates for tariffed services should not be excluded from this opportunity. Consortia membership should not be required to exclude ineligible E-rate applicants, whether they are public or private sector entities. Libraries and schools require the benefits of aggressive demand aggregation as well as E-rate discounts in order to develop and offer the types of advanced telecommunications services allowed by the Telecommunications Act of 1996.

6. Additional issues related to the application process that need to be addressed in order to streamline the program in a manner consistent with section 254

(a) Revise the Form 470 process.

The Form 470 process was developed by the Administrator as a means to ensure that applicants followed a competitive bidding process before applying for discount funding. While a good concept, the Form 470 process has not completely achieved its intended purpose of fostering competition.

In many areas of Michigan, there is only one provider for telecommunications or Internet service. Applicants residing in such areas may not receive any bids in response to their Form 470, or they may only receive a single bid from their local provider, whom they would have to choose for service anyway. In other areas (primarily large and/or urban areas) where there is greater potential for competitive bidding, service providers may want to bid, but some applicants do not always take advantage of the competitive bids offered. Providers frequently do not receive any response after contacting an applicant for more information, or they are told that the applicant does not want a bid, does not intend to change providers, or that the applicant has already chosen their provider. The applicant filed a Form 470 only because of program requirements. In this case, the provider spends a great deal of time and money to contact applicants and provide a bid, only to find out

that the applicant was not really looking for business, just filing the paperwork to comply with the application process for E-rate funding.

It is true that the Form 470 process has provided a method for service providers to learn about some applicants truly looking for service, and vice versa. However, because the Form 470 provides minimal or no information about the desired services, a service provider must first look at each form, then contact the applicant (regardless of what is actually provided on the form) to determine what services are being requested. In many cases, the applicants are confused or do not know what they want or need, and they complete the form incorrectly.

The Administrator should reconsider just how effective the Form 470 process is in encouraging competitive bidding, particularly in light of the fact that many schools and libraries are already subject to state and local competitive bidding requirements. There may be other ways to collect the appropriate applicant contact and desired services information that are less burdensome for applicants and that provide for more productive and accurate follow-up by service providers.

Because many telecommunications services are acquired month-to-month or tariffed, competitive bidding is not relevant. In these cases, the Form 470 process creates a great deal of unnecessary paperwork and time delays (i.e., the 28-day waiting period). The applicant must complete the Form 470 each year due to program requirements, even though there will be no change in service provider. When service providers follow up with applicants posting Forms 470, they become very frustrated when applicants inform them that they will be using their same provider.

To remedy the inefficiencies of the Form 470 process for ongoing telecommunications services where the service and service provider remain the same from one program year to the next, or where there is no competition in the area, the Administrator should consider creating an “E-Z Form 470.” The E-Z Form 470 would simply require the applicant to provide their contact information, the telecommunications services for which they are requesting E-rate funding, and the provider(s) that will be used (must be same as that indicated on the previous year’s Form 470 or E-Z Form 470).

Applicants would be required to file a regular Form 470 the first year that they request tariffed or month-to-month telecommunications services, or whenever they are requesting funding for contractual services. The existing 28-day posting requirement would apply for the filing of an initial Form 470. However, the applicant could file an E-Z Form 470 in subsequent years if the telecommunications service and

the service provider will remain the same. There would be no 28-day posting requirement (or “waiting period”) for an E-Z Form 470.

The E-Z Form 470 would streamline the application process for applicants and the SLD reviewers where funding for the same telecommunications services from the same service provider are requested each program year. This form would also help service providers distinguish applicants filing for ongoing services with an existing provider from those looking for competitive bids.

(b) Provide a searchable web directory of applicants and service providers.

The SLD has a wealth of information contained in its various databases. However, the information is not readily or easily accessible, thereby limiting the data’s usefulness to applicants, service providers, and state E-rate coordinators. A searchable web directory of applicants, service providers, and applications would be valuable to program participants throughout the entire application, funding receipt, and appeal process. Such web directory access would help program participants in searching for specific application data, or looking at other applications and appeals for examples on how to approach various program issues. Improving access to other existing SLD databases (e.g., funds committed and funds disbursed by applicant) would be very helpful to state E-rate coordinators in assessing the effectiveness of their outreach efforts and highlighting areas needing attention.

At a minimum, state E-rate coordinators should be provided access to *all* E-rate related information pertinent to their specific state regarding applicants, service providers, applications, funding commitments and denials, funding commitment reversals (by the SLD), funding commitment cancellations (by the applicant), reimbursements, appeals, appeal decisions, etc. Access to this information should be user-friendly with multiple keyword search criteria. At a minimum, keyword search criteria should include applicant name, applicant type, application type (specific form by program year - Forms 470, 471, 486, 472, 500, etc.), service provider name, service provider type (telecommunications, Internet access, internal connections), service provider identification number (SPIN), program year, etc. For security purposes, the SLD could place this information on a restricted area of its web site and set up a user name and password for each state E-rate coordinator for access purposes.

Modifying the SLD web site to make this data accessible to state E-rate coordinators will create a short-term administrative burden on the SLD. However, once the access has been created, automatic update routines can be established so that maintaining the data will require minimal

effort on the part of SLD staff. The time, effort, and money required to make this critical data available would be far outweighed by the benefits derived by the SLD in the form of expanded and expedited outreach efforts on the part of state E-rate coordinators to assist the Administrator in achieving the goals of the E-rate program.

(c) Improve the online application process.

To improve the efficiency, effectiveness and quality of E-rate applications, reduce the opportunity for errors, and make the process more fair and equitable among those schools and libraries with limited staff resources to fill out the myriad of paperwork, the SLD online application system should be modified as follows:

1. All forms related to the E-rate application and appeal process should be available for online filing.
2. All online forms should allow the applicant to save partially completed data before submission. Currently, applicants must re-enter data due to premature system timeouts at the SLD or interruptions which prevent the applicant from completing the online form at that particular point in time.
3. All online forms should enable applicants to check the status of their application online throughout the entire application process.
4. Applicants should be able to submit all attachments electronically.
5. The turn-around time for an applicant's Personal Identification Number (PIN) assignment takes far too long. In some cases, applicants have waited over six weeks to receive their PIN assignment by mail. Such delays defeat the purpose of an online application process.
6. For repeat filers, on-line application forms should be pre-populated each subsequent year following the initial year of application. By reducing the amount of time applicants must spend completing forms each year, schools and libraries with very limited staff are more likely to apply for discounts. Pre-populated, easy-to-use forms would expedite matching application data with existing applicant records as well as simplify the review process for SLD staff.

(d) Implement an "Evergreen" Form 471.

Applicants filing for services that are tariffed or which are under a multi-year contract should not have to file a new Form 471 every year, so long as the contract or tariff is still in effect. This current practice creates redundancy both for the applicant and the SLD. Requiring the applicant to report the same information and the SLD to re-review that same information each year is inefficient and costly to the program.

A process should be developed such that, in those cases where nothing has changed from one program year to the next, the applicant may send a simplified update to their previously filed Form 471. This update would include the amount of the request for the new program year and any necessary update information regarding participating entities (e.g., consortia members). Such a process would eliminate the need for the applicant to complete, and the SLD to review, yet another Form 471 and corresponding Item 21 attachments where the only change is the program year, the amount of the request, or minor changes to the eligible entities.

(e) Streamline the application process for Telecommunications Services.

Since basic telecommunications services are a necessity at every school and library, the FCC should consider streamlining the application process for these services by adopting a methodology similar to that used for the High Cost program currently administered by USAC. This would not only greatly simplify the application process for school and library applicants, it would significantly streamline the SLD's approval process for telecommunications services.

USAC's High Cost program provides millions of customers in high cost areas with discounts on their phone bills without those customers having to do anything. The FCC should implement a similar process so that the thousands of schools and libraries eligible for discounts on their basic telephone service can get those discounts without having to file four or more separate forms within confusing timelines.

While this process would require some basic changes in program administration, it will reduce considerably the time required for the SLD to review applications for telecommunications services. A streamlined approval process for telecommunications requests would save time and money which could be devoted to other areas of the program, such as improving the SLD's web site information and providing funds to state E-rate coordinators to attend SLD training sessions.

B. POST-FUNDING COMMITMENT ISSUES

1. <u>Providing schools and libraries the flexibility either to make up-front payments for services and receive reimbursement via the Billed Entity Applicant Reimbursement (BEAR) form process, or be charged only the non-discounted cost by the service providers, and require that service providers remit BEAR reimbursements to applicants within twenty days</u>

(a) Allow the applicant the flexibility to choose which payment option they prefer.

The choice of whether to receive discounted service (discounts) or retroactive payments (Billed Entity Applicant Reimbursements or BEAR payments) should rest entirely with the applicant. Depending on their particular situation, applicants may require different payment methods. In some cases, particularly with consortia, it is not possible for a vendor to apply discount pricing on their bills to applicants, thereby making the BEAR form a necessary part of the funding process. Applications that cover multiple telecommunications circuits, for example, may require the BEAR process in order to account for eligible vs. non-eligible circuits and services, as well as eligible vs. ineligible uses, in order to request the correct discounted amount.

Currently, there is insufficient information provided through the application process that would enable the vendor to properly discount a large consortia bill. Further complicating the issue is the numerous changes that can take place throughout the funding year in circuit speeds and other services. This makes the BEAR form a requirement for many consortia. Therefore, FCC rules should specify that service providers *must* offer applicants the choice between BEAR payments or discounts.

The FCC also needs to incorporate a means whereby the applicant may specify their preferred type of payment. While the instructions for the Form 486 state that, "…The Billed Entity must choose only ONE method of discounts for the relevant Funding Year…," there is no place on the actual Form 486 itself to indicate that choice. This means that the choice of payment method is dependent upon the vendor. Applicants can only hope that their vendor sends in the appropriate form to reflect their desired payment option (i.e., Form 472 for BEAR payments or Form 474 for discounts on bills).

The current process of requiring BEAR payments to pass through vendors has resulted in some applicants never receiving the funds because of vendors going out of business or absconding with the funds. Fortunately, for the Administrator, these cases are relatively few. However, for those applicants caught in this predicament, the ramifications are enormous. Thus, in addition to allowing the applicant to choose BEAR payments or discounts (and modifying the Form 486 to accommodate that choice), the Administrator should send BEAR payments directly to applicants and eliminate BEAR payments to vendors.

Allowing BEAR payments to be assigned directly to applicants would have the following benefits:

1. Applicants and service providers would realize an improvement in operations because the current two-step process of payment to the service provider who, in turn, pays the applicant, would be reduced to a single step (i.e., the Administrator pays the applicant directly).
2. The Administrator would no longer be required to shepherd the check delivery process from vendor to applicants, thereby reducing administrative effort.
3. The administrative burden on service providers would be reduced as they would no longer have to deposit one check from the Administrator and cut a separate check to the applicant.
4. Applicants would no longer run the risk of extremely late reimbursements or no reimbursement at all due to bankruptcy filings or unethical actions by vendors due to the fact that reimbursement would come directly from the Administrator, and no longer pass through the hands of the vendor.

Giving applicants their choice of reimbursement method and sending BEAR payments directly to the applicant would serve to streamline operations and reduce fraud and abuse. It would also eliminate the need to establish and monitor timelines (currently ten days) within which vendors must remit BEAR reimbursements to applicants.

2. Limiting transferability of equipment obtained with universal service discounts

(a) Limit internal connections funding requests to two consecutive years and transferability of equipment to three years.

There are some schools in the 90 percent discount bracket that apply for and receive funding for the same equipment year after year, and then transfer the new equipment acquired via E-rate funding to other schools within their district who are in a much lower discount bracket. Because funding for internal connections typically runs out by the time applications at the 87 percent level are processed, this practice appears to be preventing lower discount schools from getting a chance at internal connections funding. Following is a proposed solution to make the funding of internal connections applications more equitable.

First, the FCC should consider limiting an applicant's request for funding for internal connections items to two consecutive years when the limitation is site specific (eligible entity number level), applies to

non-recurring costs, and does not interfere with ongoing maintenance agreements. During the third consecutive year, such applicant should not be allowed to apply for internal connections funding meeting the above criteria. After the third consecutive year, the applicant would be allowed to apply for funding for internal connections items for the next two consecutive years, with the next third year being an ineligible year for such funding. This would reduce the heavy allocations to the highest discounted schools every year, and allow funding to be available for Priority 2 services further below the current demarcation of 87 percent in subsequent years.

Second, in parallel with the above proposal, a school or library should be required to keep E-rate purchased equipment in place at the designated facility for a period of at least three years. After the third year, the applicant should then have the freedom to re-deploy the equipment as needed.

Tracking internal connections funding requests within the two consecutive years' timeline could be done systematically with software changes to the SLD's application database. Applications currently identify affected sites and the Administrator can electronically validate each site for which a discount has been requested and funding committed. The Administrator could make compliance automatic by setting up the database to block additional non-recurring requests when similar requests have been granted for two consecutive years for each site. Equipment transfers could be monitored through the Administrator's current random audit process.

3. <u>Allowing members of rural remote communities to use excess capacity from services obtained through the universal service support mechanism in certain limited situations</u>

(a) Expand Internet access to those in need.

The recent Alaska decision was a step in the right direction to extend Internet access to members of the community who otherwise would not be able to obtain it. The FCC should grant waivers similar to the Alaska waiver to other applicants who may request that their communities be allowed to use excess capacity from services obtained through the universal support mechanism provided that there is no additional cost to the program incurred and no user fees assessed.

The FCC should use current application screening and audit procedures in place to ensure that applicants do not request more service than is necessary for educational purposes.

4. Additional post-funding commitment issues that need to be addressed in order to streamline the program in a manner consistent with section 254

(a) Provide post-funding commitment data to state E-rate coordinators on a routine basis.

State E-rate coordinators provide a tremendous amount of assistance to the SLD in reaching out to applicants to help them through the entire E-rate application and funding process. Yet, the SLD does not make routinely available to state E-rate coordinators basic information on applicants, service providers, applications, funding commitments, funding denials, reimbursements, appeals, and appeal decisions. The information that is made available is either difficult to access (because one must know an entity or application number) or is accessible only on a limited basis as the following example illustrates.

State E-rate coordinators currently receive one-day advance notification by the SLD of funding commitments for each funding wave released throughout the program year. The notification directs them to a restricted place on the SLD web site where a list of applicant recipients is provided by state. The list of applicant recipients includes applicant name (school or library), service type (telecommunications, Internet access, or internal connections), contact name, phone number, address, city, zip, dollar amount funded, and discount percent. This information is useful, however, if the E-rate coordinator does not print it out right away, it is no longer accessible once the official funding commitments for that wave are posted to the general SLD web site. The funding commitment information posted to the general SLD web site does not include the contact name and phone number. Thus, if a state E-rate coordinator wants to follow-up with an applicant regarding a particular funding commitment, he/she must print out the advance notification list before it is removed from the restricted area of the SLD web site in order to have the corresponding contact information readily available. Since Form 486 filing data is not made available to state E-rate coordinators, and since Form 471 filing data is only accessible by application number and security code number (which many state E-rate coordinators do not know offhand), the process of following up with applicants regarding specific funding commitments becomes rather difficult.

The SLD can remedy this situation very simply, by making available to state E-rate coordinators *all* E-rate information it has pertaining to each and every applicant within their respective states as delineated in

section III.A.6.(b) above. For security purposes, the SLD could place this information on a restricted area of its web site and set up a user name and password for each state E-rate coordinator for access purposes.

Making this information available will require some effort on the part of the Administrator. However, in order for state E-rate coordinators to continue to assist the Administrator in achieving the goals of the E-rate program through expanded and expedited outreach efforts, it is essential that this type of information be made readily available.

C. APPEALS

1. Increasing the time limit for filing appeals to 60 days

(a) Permanently establish the current 60-day appeal deadline.

The decision made by the FCC to increase the time limit for filing appeals from 30 days to 60 days, for both SLD and FCC appeals, was a good decision and should be made permanent.

2. Considering appeals filed as of the day they are post-marked

(a) Implement this policy immediately.

As with the Form 471 application filing, appeals sent via U.S. mail or express delivery should be considered filed as of the day they are post-marked.

3. Procedures for funding successful appeals

(a) Streamline the application process to reduce the need for appeals.

Implementing many of the suggestions for program changes and improvements contained in this document and responses from others to the NPRM would serve to streamline the process, improve the accuracy of the applications, and, therefore, reduce the need for appeals. Specifically, allowing data entry staff hired by the SLD to make simple, common sense corrections to applications would enable applicants to use appeals as a last resort for matters of significance instead of as a first course of action for minor mistakes on application forms. The fewer the number of appeals, the fewer the number of “successful” appeals

that will have to be funded outside the normal program year funding parameters.

(b) Use carryover funds from previous year to fund appeal decisions pertaining to that previous year.

Any funds that are not committed in a given funding year should be automatically tagged for funding appeals for that same respective funding year, even though decisions regarding those appeals may not occur until sometime during the next funding year. Once appeals for a given funding year have been resolved and funded, any leftover funding from that program year should then be released to fund regular applicant funding requests for the next subsequent funding year(s).

(c) Use Form 500 funds to fund appeal decisions.

Funds for a given program year released by applicants back to the SLD via the Form 500 process should automatically be earmarked to fund appeals pertaining to that program year, even though decisions regarding those appeals may not occur until sometime during the next funding year. Once appeals for a given funding year have been resolved and funded, any leftover Form 500 "released" funding from that program year should then be released to fund regular applicant funding requests for the next subsequent funding year(s).

4. <u>Additional appeals issues that need to be addressed in order to streamline the program in a manner consistent with section 254</u>

(a) FCC should adopt a rule requiring all appeals to be acted upon within 60 days.

Just as applicants are required to provide information to the SLD or FCC within specified timelines, it is only right that the SLD and FCC provide information to applicants regarding their appeals in a reasonable timeframe. Currently, when an applicant files an appeal with the SLD or FCC, no feedback is provided at all to the applicant as to whether their appeal has been received or its status. Sometimes, nine months or more will pass before an applicant hears anything about their appeal. This is inappropriate and reflects poorly on the administration of this program.

The FCC should adopt a rule requiring that appeals be acted upon by the SLD and FCC within 60 days of receipt. At a minimum, applicants should be notified that their appeal has been received by the SLD or FCC along with a current status and projected decision date. This

notice could be sent electronically to those applicants for whom the Administrator has an e-mail address on file.

Streamlining the application process by adopting the recommendations suggested in this document and other responses to the NPRM will likely result in fewer appeals, which would mean fewer notices that the SLD or FCC would need to send out to appellants regarding the receipt and status of their appeals.

D. AUDITS

1. Adopting a rule explicitly authorizing independent audits

(a) Do not require applicants or providers to pay for independent audits.

Applicants and service providers should not have to bear the cost of an independent audit until and unless specific wrongdoing has occurred. Independent audits requested by the SLD should be paid for by the Administrator out of E-rate funds. If wrongdoing is discovered and proven, then the applicant or service provider should be required by the Administrator to repay any inappropriate discounts received, as well as punitive monetary penalties, including the cost of the audit.

2. Barring from the program certain applicants, service providers, and others that engage in willful or repeated failure to comply with program rules

(a) Do not engage in barring participants from the program.

We do not believe it is appropriate for the FCC to adopt rules that allow participants to be barred from the program. While restitution is an appropriate remedy, permanent exclusion from the program is unfairly punitive. Publicity on willful or repeat violators or offenders of the program may be more valuable (and easier to implement) than protracted attempts to bar participation. Suspension from the program for a specified time period (e.g., the next program year) may be an acceptable solution. However, the program participant must be given "due process" before any restitution or suspension from the program is mandated.

3. Additional issues relating to audits that need to be addressed in order to streamline the program in a manner consistent with section 254

(a) Make turnaround request deadlines imposed by auditors more reasonable.

The turnaround times for documentation requested by auditors is unreasonable. Applicants should be given, at a minimum, 10 business days to provide auditors with requested documentation.

E. UNUSED FUNDS

1. Reasons for unused funds

(a) The lengthy application process can result in funds going unused.

Failure of the Administrator to approve applications in a timely manner discourages participation in the program. The time between the submission of the Form 471 and approval of an application can take as long as 9 or more months. The following are some examples of things that happen during the lengthy application and funding process that can lead to unused funds:

1. Libraries and small schools often have turnover during that time, and new staff are unsure how to proceed in the program. Thus, forms required to complete the application process (e.g., Forms 486 and 472) sometimes never get filled out due to a lack of knowledge as to how to proceed.
2. Schools or libraries need to move forward with a project and simply cannot wait for the funding commitments and payments from this program when they are so slow in coming.
3. The applicant's funding was for a certain network configuration. However, given the long lead time between the request and when they could actually proceed, the technology changes such that the applicant could get a bigger, better configuration for less money.
4. The applicant overestimates the amount needed for a project because the building is being planned and the details that affect wiring, telecom and Internet service are not available. The applicant then gets funded at the full amount. However, once the services are installed, the total cost turns out to be less than initially estimated, so the extra funding goes unused.
5. The applicant is approved for a project, but the rest of the funding falls through for reasons such as budget cuts, opposition by decision makers, or other grant sources do not come through as expected.

6. The applicant underestimates the cost of a new building project; thus there is not enough money, even with the discounts, to install the service. The applicant cannot partially implement the project (e.g., wiring only half a building), so they cannot proceed. The applicant then has to find another technology solution, which, of course, is not eligible for funding because it was not applied for via a Form 470 and Form 471.
7. An applicant changes service providers and the new service is cheaper than the funding amount applied for.

(b) The SLD deadline for installation of non-recurring services can result in funds going unused.

An applicant may apply for and receive a specified amount to install a high-speed data circuit. However, because the circuit cannot be delivered by the service provider in time to meet the deadline for installation of non-recurring services for that program year, the applicant ends up not being able to use the money and must reapply in the subsequent program year. The monies received initially by the applicant go unused.

2. How to reduce the level of funds that go unused

(a) Realign the funding cycle to more closely coincide with applicants' budgeting cycles.

Many applicants cannot make final funding decisions until after the state legislature has completed its budgeting process, typically April or May, or later, of the same year. Yet, the E-rate program requires contracts and agreements to be in place by January of that year. Thus, in order to maximize discount possibilities, some applicants apply for services they can afford, presuming certain budgetary possibilities, but then must reduce services when budgetary limitations are finally realized. By realigning the E-rate funding cycle so that applicants may request funding for services that they know their budgets can accommodate, applicants will be much more likely "able" to make use of their E-rate funding.

The current timing of the funding process means that applicants are making their best guess (or "wish") at what their budget will be, and then filing for E-rate funds accordingly. When that best guess gets slashed by their state legislature, applicants are, in many cases, unable to make use of E-rate funds they were awarded based on the best guess. Realigning the funding cycle would help to reduce the amount of funds that presently go unused due to the mismatch between the E-rate funding cycle and applicant budgeting cycles.

3. What to do with undisbursed funds

(a) Roll over unused funds to the next funding year.

All unused funds in a given funding year, after appeal decisions in the favor of the applicant have been paid, should be rolled over into the next funding year for disbursement to applicants. These funds should be disbursed to applicants in that next year even if such disbursement exceeds the $2.25 Billion funding cap.

We believe that Commissioner Copps' dissent is entirely accurate. "In each year, the Administrator of the E-rate program collects funds up to the cap to meet demand. Yet, although initial estimates were that demand would not exceed the cap for nearly a decade, the program has been so successful that since the first year, requests from our nation's schools and libraries have exceeded the available funding. All funds, however, are not disbursed for a variety of administrative reasons or because individual schools and libraries do not fully use the money committed to them. Our rules were designed to ensure that funds would be used for their intended purpose or returned so that other deserving schools could benefit."

Since demand has consistently outstripped funding over the past two funding years, it is not appropriate to return unspent E-rate funds to telecommunications carriers. Unspent funds should be applied first to successful appeals in the current funding year, and then rolled over to meet demand for the next funding year.

(b) Use unused funds from the early program years to cover program administrative costs incurred by the states.

Refer to section III.F.2.(c) below for detailed explanation.

4. Additional issues relating to unused funds that need to be addressed in order to streamline the program in a manner consistent with section 254

(a) No comment.

F. OUTMODED ADMINISTRATIVE/PROCEDURAL RULES OR POLICIES

1. Revising or eliminating outmoded administrative or procedural rules or policies relating to the schools and libraries universal service support mechanism

(a) Change the method to determine library and consortium discounts.

Consortia applications result in fewer overall applications that the SLD must review, thereby helping to make the application review process much more efficient and reducing the SLD's administrative costs. The FCC should look for ways to encourage the participation of consortia in the E-rate program. Unfortunately, the current discount structure penalizes consortia applications by requiring them to average discounts to reach a melded "shared" discount. Libraries and library consortia, who must begin with a school district average, are put at a disadvantage when they are forced to accept this further degradation in the discount to which they are entitled.

The FCC should look for ways to encourage the aggregation of demand through consortia, such as adopting a discount mechanism that does not penalize consortia, especially library consortia, or by providing a separate discount incentive for consortia.

One way would be to develop a discount calculation method other than the current "averaging of averages" that penalizes libraries and consortia. The Administrator must recognize that the school lunch program does not always reflect the constituencies served by libraries. Many libraries have great difficulty in obtaining national school lunch program participation data because they are not schools, and, in many cases, are not affiliated with the schools that have the necessary data. Currently, schools may choose to use alternative discount methods, whereas libraries and consortia may not. Potential alternatives to consider include looking at the discount percent of the nearest elementary school, using 2000 census data, or some other system. Libraries and consortia should have alternative discount calculation methods made available to them just as schools do.

Another way would be to add a five or ten percent "bonus" to a consortium's discount rate along with a set-aside funding level for consortia applications, particularly for Priority 2 applications. This would significantly improve the likelihood that the most disadvantaged schools and libraries would be able to benefit from the E-rate program. It could

also give those applicants in the 70 percent discount range a chance at getting funded for Priority 2 items.

Yet another way would be to use a single discount rate (based on total student NSLP eligibility) for multi-site entities; rather than an aggregate average of individual site discounts or weighted discounts for consortia.

At a minimum, an alternative discount category should be considered for libraries and consortia to make sure that discounts are more equitable between consortia and libraries (who must use an "average of averages"), and non-consortia applicants (who are able to use more direct figures in calculating their discount percentages).

(b) Review Urban/Rural classifications.

Some schools and libraries are penalized by the current Urban/Rural classification method used by the SLD. This happens when a truly rural area gets classified, for E-rate purposes, as "urban" solely because the particular county in which it is located is classified as urban. Such erroneous classification denies applicants within that rural community the appropriate discount level and corresponding additional E-rate dollars they would otherwise be entitled to. It also prevents the program from providing connectivity funding to those parties for which the program was established to provide the greatest assistance.

The FCC should consider looking into other classification methods that might be more accurate, such as taking the rural/urban classification down to a level smaller than "county," or considering some of the alternatives presented in the preceding section for determining the discount percent for libraries and consortia.

(c) Consider using Census data instead of Free/Reduced Lunch data for calculating discounts.

For many E-rate applicants, particularly private schools, libraries, and consortia, calculating applicable free and reduced lunch figures is a monumental, and, in some cases, an impossible task. Even within public school districts, the data can be difficult to accurately calculate due to pre-K and special education programs that must be factored into or out of the figures depending on a state's specific situation. As a result, many schools and libraries are seriously disadvantaged by the current discount calculation system.

The FCC should consider other mechanisms to use in calculating discounts. Since the new ESEA "No Child Left Behind" legislation uses Census data to determine need, perhaps the FCC should consider using the same criteria for determining applicant discount levels for E-

rate applicants. Census data is readily available, is consistent, and more readily reflects the true level of need in a geographic area. Using census data instead of the complex school lunch program data would eliminate many hours of calculations performed by applicants, and eliminate hundreds of hours of follow-up regarding school lunch counts conducted by PIA staff at the SLD.

(d) Set annual collections at the $2.25 Billion cap.

Currently, if disbursements are estimated to be below the $2.25 Billion cap, then the Administrator reduces collections to the estimated disbursement amount. With demand for funding over the last two years being almost twice the funding cap, collections should not be reduced to any amount below the current $2.25 Billion funding cap.

(e) Permit rollover of unused funds for disbursement to applicants or states from year to year.

All unused funds in a given funding year, after appeal decisions in favor of the applicant have been paid, should be rolled over into the next funding year for disbursement to applicants, or disbursement to states to cover program outreach costs. These funds should be disbursed to applicants or states in the next program year even if such disbursements exceed the $2.25 Billion funding cap for that program year.

(f) Permit the SLD to award funding in excess of $2.25 Billion annual cap.

Unused funds from a previous funding year should be disbursed in the next funding year even if total disbursements exceed the $2.25 Billion annual funding cap in that next funding year.

(g) Consider incentives to encourage applicants to release funds.

For those applicants who are unable to use their E-rate funding, whether it be due to their anticipated budget not getting approved or untimely receipt of the funds from the SLD, there is no incentive for such applicants to release unused funds. To remedy this situation, so that such funds could be applied to approved applications awaiting available funds, the FCC should consider the following incentives:

1. Include a friendly reminder on the Form 486 that the applicant will promptly file a Form 500 to release any funds that will not be used.
2. Track unused and unreleased funds on an applicant-specific basis. Send a notice to the applicant, along with a blank Form 500 attached, reminding the applicant that their E-rate funding amount has not been used and that they may want to consider filing the

attached Form 500 to release those unused funds so that other applicants might benefit.

3. Consider permitting an applicant to defer a portion of their funding into the following program year, so long as the other unused portion is released early in the current year to be awarded to other approved applicants.

(h) Establish a standard application window.

The window for filing Forms 471 should be standardized as well as realigned to coincide with school budget cycles (reference section III.E.2.(a) above). Since the timeframe over the past few years has been similar, it would be very easy to establish a standard window that is the same each funding year (e.g., April 16 through June 30). Having the window start in April would give many applicants the opportunity to base their funding requests on approved budgets for the next school year. Current practice requires many applicants to make their best guess due to the Form 471 application process being out of synch with school budget cycles. In the event the window start or finish date happens to fall on a non-business day, then the next business day should be the effective start/finish date.

Having a standardized application window that is more closely aligned to typical school budget cycles would enable applicants to prepare their applications in advance, help alleviate last-minute filings and "hurried" mistakes, and result in more accurate funding amounts being requested.

2. Additional issues related to outmoded administrative or procedural rules or policies that need to be addressed in order to streamline the program in a manner consistent with section 254

(a) Establish sufficient reserves.

The Administrator needs to establish sufficient reserves to cover those funding years when awards granted exceed annual collections (e.g., in the case of appeal decisions in favor of the applicants, and retroactive appeal windows). As has been mentioned earlier, steps that can be easily taken to build reserves include transferring unused funds from the previous year to the next funding year; and applying funds released by Form 500 applications to current year successful appeals, and then to the next year's funding reserve. The Administrator should also consider engaging the services of a qualified actuary to establish adequate reserves from available funds.

(b) Improve the accuracy and availability of information and guidelines at SLD help desks and on SLD web site.

Conflicting, inaccurate, and inconsistent answers to questions and inquiries by staff at the SLD's Client Service Bureau (CSB) and Technical Client Service Bureau (TCSB) are given frequently. An erroneous answer from the SLD's help desk just adds to the applicants' frustration level as they try to work their way through a confusing and complicated application process. If the CSB or TCSB agent can't get it right, who can?

Trying to find information pertaining to a specific E-rate question on the SLD's web site can be quite time-consuming and frustrating as well. To make matters worse, some of the information found on the SLD's web site is inaccurate. For example, the current instructions for the Form 472 (the BEAR form), under Purpose of Form on the second page, item number three state: "The applicant has filed FCC Form 486 (Receipt of Service Confirmation Form) and entered "Yes" in Column (I) of Item 6 of the FCC Form 486 to indicate its intention to submit a Billed Entity Applicant Reimbursement Form." As it turns out, there is no Item 6, Column (I) on the Form 486 at all. How does an applicant successfully complete an application when the instructions for completing such an application do not match the application form?

The complex application process needs to be simplified so that both the Administrator and the applicant can work from the same page. Hopefully the suggestions provided in this document, as well as those received from other commentators, will assist the Administrator in making changes needed to simplify the program.

(c) Cover some of the program administrative costs incurred by the states.

Within the State of Michigan, the Department of Information and Technology, the Department of Education, the Library of Michigan, intermediate school districts, and library consortia all provide various forms of outreach services to assist schools and libraries through the technology planning, competitive bidding, application, reimbursement, and appeal process of the E-rate program. Similar outreach efforts are conducted by other states across the nation. The outreach effort provided by states is the primary reason that the FCC is able to maintain very low administrative costs when compared to other federal programs.

Current budget deficits are requiring many state E-rate coordinators and state agencies to scale back on their outreach efforts. While the

willingness on the part of states to assist E-rate applicants will still exist, the reality is that current state dollars used for program outreach have diminished, meaning that outreach efforts cannot extend as far as they used to.

Since the SLD and the FCC derive significant benefits from the outreach efforts put forth by states, it is in their best interest to ensure that such outreach efforts continue. One way to do that is to provide some financial assistance to the states for the outreach efforts performed by their state E-rate coordinators and other state agencies. First, the FCC should cover the travel expenses for up to three E-rate coordinators from each state and U.S. territory to attend formal training sessions hosted by the SLD. Second, the FCC should provide a toll-free number for the biweekly teleconference calls between the SLD, FCC, and state E-rate coordinators, as well as the biweekly teleconference calls among state E-rate coordinators. These conference calls are essential for the exchange of critical information between the Administrator and state E-rate coordinators. They are instrumental in enabling the program to "keep rolling along" across the nation. Third, the FCC should provide an annual stipend to the agencies within each state responsible for coordinating E-rate awareness programs, providing technology plan and application training, approving technology plans, and conducting other E-rate outreach activities.

These suggested areas of compensation to the states represent only a fraction of the total costs incurred by some states for their E-rate outreach efforts. However, by providing monies to the states for these and other activities, the FCC would not only be helping the states financially, but, more importantly, would also be ensuring that critical program information continues to reach program participants – a key factor to the continued success of the program.

(d) Issue a new NPRM on alternative disbursement methods for the Schools and Libraries Universal Support mechanism.

If the numerous changes needed to make the E-rate program easier to work with and more equitable among applicants are not implemented, then serious consideration should be given to opening a new NPRM requesting comments on alternative disbursement mechanisms for E-rate funds.

IV. CONCLUSION

We recognize the difficult balancing act that the FCC must perform in satisfying the demands of E-rate applicants and service providers while following the letter of the law. We submit the above comments in an effort to promote rules changes that will make working with the program easier for all parties, and that will improve operations, ensure equitable distribution of program funds, and prevent fraud, waste, and abuse.

Respectfully submitted this 2nd day of April 2002,

Jacque Passino
Director
Department of Information Technology
State of Michigan
105 W. Allegan
P.O. Box 30743
Lansing, MI 48909
(517) 373-1006